United Nations S/AC.37/2004/(1455)/33

Security Council

Distr.: General
3 May 2004
English
Original: Spanish

Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

Note verbale dated 30 April 2004 from the Permanent Mission of Costa Rica to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Costa Rica to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, and has the honour to refer to his note SCA/2/04/(07) of 11 February 2004 concerning the submission of reports in accordance with paragraph 22 of Council resolution 1526 (2004), of 30 January 2004.

The Permanent Mission of Costa Rica has the honour to enclose herewith the report submitted by the Government of Costa Rica pursuant to resolutions 1267 (1999) and 1526 (2004) (see annex). The Permanent Mission would be grateful if you would have the report circulated as a document of the Security Council. However, the responses to questions 15 and 19 are of a confidential nature, and are not for publication.

04-33672 (E) 010604 010604

Annex to the note verbale dated 30 April 2004 from the Permanent Mission of Costa Rica to the United Nations addressed to the Chairman of the Committee

Report submitted by the Republic of Costa Rica pursuant to Security Council resolution 1455 (2003)

I. Introduction

1. Please provide a description of activities, if any, by Osama bin Laden, Al-Qaida, the Taliban and their associates in your country, the threat they pose to the country and the region, as well as likely trends.

According to the studies which have been conducted, Osama bin Laden, Al-Qaida, the Taliban and their associates have not been involved in any activities in Costa Rica; they are not known to pose any threat to the country.

II. Consolidated List

2. How has the 1267 Committee's List been incorporated within your legal system and your administrative structure, including financial supervision, police, immigration control, customs and consular authorities?

The Consolidated List has been transmitted to the Costa Rican Drug Institute (ICD), the Office of the Superintendent of Financial Institutions (SUGEF), the Office of the Superintendent of Securities (SUGEVAL), the Office of the Superintendent of Pensions (SUPEN), and the Directorate of Migration and Aliens. The Directorate of Intelligence and Security (DIS) also works with the List, in coordination with the migration and customs authorities and the police forces.

3. Have you encountered any problems with implementation with regard to the names and identifying information as currently included in the List? If so, please describe these problems.

The List is difficult to use because in many cases the information it contains is not very precise and the listed persons often use aliases. With the exception of SUPEN, which has a centralized database of members of pension funds in the country, the other Superintendents' Offices are required to provide the List to all the financial bodies that they monitor, both public and private, and await their responses. This has slowed the process of checking and seeking out the assets of the listed persons.

4. Have your authorities identified inside your territory any designated individuals or entities? If so, please outline the actions that have been taken.

According to the studies carried out in Costa Rica, none of the natural and legal persons named in the List have migrated to the country or possess assets or resources here.

5. Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Osama bin Laden or members of the Taliban or Al-Qaida that have not been included in the List, unless to do so would compromise investigations or enforcement actions.

No individuals or entities associated with Osama bin Laden or members of the Taliban or Al-Qaida that have not been included in the List have been found in Costa Rica.

6. Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the List? Please specify and elaborate, as appropriate.

No such proceedings have been brought to date.

7. Have you identified any of the listed individuals as nationals or residents of your country? Do your authorities have any relevant information about them not already included in the List? If so, please provide this information to the Committee as well as similar information on listed entities, as available.

None of the listed persons are nationals or residents of Costa Rica. There is no information on persons not included in the List.

8. According to your national legislation, if any, please describe any measures you have taken to prevent entities and individuals from recruiting or supporting Al-Qaida members in carrying out activities inside your country, and to prevent individuals from participating in Al-Qaida training camps established in your territory or in another country.

According to the investigations which have been conducted, there are no members of Al-Qaida or terrorist training camps in Costa Rica. In coordination with the International Criminal Police Organization (Interpol), DIS monitors the entry to and departure from the country of suspect individuals, and if such a case were to arise, it would result in the activation of coordination mechanisms with the immigration and customs authorities and the security forces, so that the necessary action could be taken.

III. Financial and economic assets freeze

Under the sanctions regime (paragraph 4 (b) of resolution 1267 (1999) and paragraphs 1 and 2 (a) of resolution 1390 (2002)), States are to freeze without delay the funds and other financial assets or economic resources of the listed individuals and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, assets or resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory.

9. Please describe briefly:

- **The domestic legal basis to implement the asset freeze required by the resolutions above;**

The financial monitoring system in Costa Rica, designed to prevent the commission of offences such as the laundering of funds derived from the commission of serious offences, is coordinated by the Costa Rican Drug Institute (ICD), whose Financial Analysis Unit (UAF) works in coordination with SUGEF, SUGEVAL and SUPEN, which directly supervise the various bodies making up the national financial system. This legal relationship, together with the protocols established in order to detect suspicious clients or transactions, are regulated by the

Act on narcotics, psychotropic substances, illicit drugs, money-laundering and related activities (Act No. 7786 of 30 April 1998, amended by Act No. 8204 of December 2001). The Act also provides for procedures to lift banking secrecy and for the freezing of funds, subject to court order.

However, Act No. 8204 refers to the laundering of funds derived from the commission of serious offences, and currently does not empower ICD to take action in order to prevent the financing of terrorism, which can occur without the commission of a prior offence the proceeds of which would need to be laundered. Nonetheless, if necessary, if assets detected within the country were thought to be intended for intentionally financing terrorism, a judicial case could be brought against the persons involved on the basis of article 274 (unlawful association) or article 374 (international crime) of the Penal Code (Act No. 4573 of 4 May 1970 and its amendments), which provide for penalties for persons belonging to organizations, whether national or international, the purpose of which is to commit acts of terrorism. This law has been interpreted in such a way that the financing of acts of terrorism can currently be penalized, if necessary, under the current legislation. On the basis of such an accusation under criminal law, a court order would be issued, freezing the funds involved. Another possibility is that the freezing of the funds could take place as a precautionary measure at the request of another country, through a process of judicial cooperation in the form of a letter rogatory. In that case, the court order freezing the funds would be issued at the request of another country.

- **Any impediments under your domestic law in this context and steps taken to address them.**

As stated in the above response, the current Act No. 8204 does not provide for advance screening mechanisms to prevent the financing of terrorism. In order to fill this gap, and as a result of the reports submitted by Costa Rica to the Counter-Terrorism Committee (CTC) and the subsequent exchanges with that Committee, the Government of Costa Rica produced a draft law to strengthen its existing counter-terrorism legislation, proposing reforms to the country's legal system to adapt it to the present-day requirements of the fight against terrorism. To that end, the draft law proposes first of all to reform the Penal Code so that it will be clearly set out that activities for the purpose of financing terrorism or recruiting persons to commit acts of terrorism, within or outside the country, are criminal offences, in accordance with the terms of Security Council resolution 1373 (2001) and other current international law.

The draft legislation also amends Act No. 8204, extending the range of the monitoring of financial transactions and the scope of action in that regard of the ICD and the UAF, so that the monitoring can also be effective in the prevention and detection of the financing of terrorism. It also provides for reforms so that measures established in order to penalize money-laundering offences can also be applied to offences related to terrorist financing.

The matter is being approached in this manner in order to take advantage of the existing legal framework and experience in the area of financial monitoring in Costa Rica. It is considered neither appropriate nor feasible, from the economic and workload standpoint, to create a new agency dedicated solely to preventing the financing of terrorism. These reforms would enable the country to fulfil its

international obligations with a minimum of changes to its national legislation. Particularly in the case of the prevention and suppression of the financing of terrorism, the new measures would build on the existing legal framework, infrastructure and experience in the prevention of money-laundering, since it would be for UAF, together with the three Superintendents' Offices (SUGEF, SUGEVAL and SUPEN), to take responsibility for detecting and preventing the financing of terrorism.

10. Please describe any structures or mechanisms in place within your Government to identify and investigate Osama bin Laden, Al-Qaida or Taliban related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally and/or internationally.

A national intelligence community has been set up in Costa Rica, involving the ICD, the three Superintendents' Offices, DIS and Interpol, which jointly conduct investigations and analyses of natural and legal persons suspected of having terrorist connections. On the basis of the lists produced by the Security Council, the financial intelligence community can investigate whether such persons have resources in the country. If so, the UAF would pass on the information to the judicial authorities so that they can issue the court order authorizing the necessary action. As has been explained above, the national intelligence community interacts constantly with the regional and worldwide intelligence communities, sharing the necessary information so that advance knowledge can be obtained as to the movements of persons suspected of belonging to terrorist groups.

11. Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Osama bin Laden or members of Al-Qaida or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements. Please indicate how these requirements are enforced, including the names and activities of agencies responsible for oversight.

Article 15 of Act No. 8204 establishes that persons who engage in the following activities, among others, shall also be subject to the Act:

(a) Systematic or substantial money-changing operations and transfers through any instrument, such as cheques, bank drafts, bills of exchange or similar instruments;

(b) Systematic or substantial operations with respect to the issuance, sale, recovery or transfer of traveller's cheques or postal or money orders;

(c) Systematic or substantial transfers of funds effected by any means;

(d) Management of trust funds or any kind of resource management carried out by individuals or legal entities that are financial intermediaries.

Individuals or legal entities that carry out the activities indicated above and are not supervised by any of the three Superintendents' Offices in Costa Rica must register with SUGEF, although this does not mean that they are authorized to operate.

In order to prevent operations involving the concealment and movement of money of suspicious origin and other transactions aimed at laundering money deriving from serious crimes, financial entities will have to comply with the following provisions of article 16 of newly adopted Act No. 8204 on psychotropic substances:

(a) Obtain and keep information on the true identity of persons on whose behalf an account is opened or a transaction is carried out, if there are suspicions that customers may not be acting on their own behalf, especially in the case of legal entities that do not carry on commercial, financial or industrial operations in the country where they are based or domiciled;

(b) Keep named accounts; anonymous accounts, numbered accounts or accounts under fictitious or inaccurate names are not allowed;

(c) Record and verify, by reliable means, the identity, representative status, domicile, legal capacity, occupation or company aim of individuals or legal entities, as well as other identifying data, regardless of whether they are occasional or regular customers. Such verification shall be carried out on the basis of identity documents, passports, birth certificates, driving licences, company deeds and statutes or any other documents, official or personal. In particular, it shall be carried out when commercial relations are established, especially when new accounts are opened, savings books are issued, trust fund transactions are carried out, safe deposit boxes are rented or cash transactions take place involving over US$ 10,000 or the equivalent in other foreign currencies;

(d) Keep, for the duration of an operation and for at least five years after the date on which the transaction is completed, records of the information and documentation required under article 16;

(e) Keep for a minimum of five years customer identity records, account records, commercial correspondence and records of financial operations enabling a transaction to be reconstructed or concluded.

All financial entities will have to record, on a form designed by the competent supervisory and regulatory body, any incoming or outgoing cash transaction, in national or foreign currency, involving over US$ 10,000 or the equivalent in colones. This also applies to transfers to and from abroad.

Article 21 specifies the data that will have to be included on forms filled out by financial entities supervised by SUGEF, SUGEVAL and SUPEN:

(a) Identity, signature, date of birth and address of the person physically making the transaction. A photocopy of some form of identity document will also have to be produced. Legal entities will have to provide the same information in respect of their legal representative and their resident agent as that requested from individuals;

(b) Identity and address of the person in whose name the transaction is being carried out;

(c) Identity and address of the beneficiary or recipient, if any, of the transaction;

(d) Identity of the accounts, if any, affected by the transaction;

(e) Type of transaction involved;

(f) Identity of the financial entity which made the transaction;

(g) Date, time and amount of the transaction;

(h) Origin of the transaction;

(i) Identification of the official who processed the transaction.

Article 22 establishes the obligation of the financial entity to record the transaction accurately and fully on the date on which it takes place and to keep the record of the transaction for five years from that date.

Under article 23, multiple cash transactions, whether in national or foreign currency, the aggregate amount of which exceeds US$ 10,000 or the equivalent in colones are deemed to be a single transaction if they are carried out by or on behalf of a specific person in the course of one day or within any other period of time established by the competent supervisory and regulatory body. In such cases, if the financial entity or its employees, officials or agents are aware of such transactions, they must record them as indicated above.

Under articles 24 and 25, financial entities subject to the provisions of this section must pay special attention to suspicious transactions, such as those not carried out in the customary manner and those which, while not significant, take place regularly without any obvious economic or legal basis.

If it is suspected that the transactions described above constitute or are related to illicit activities, including transactions deriving from transfers made to or from the country, financial entities must immediately report them confidentially to the corresponding oversight body, which shall refer them at once to the Financial Analysis Unit.

Article 26 of Act No. 8204 establishes the obligation of supervised entities to adopt, develop and implement internal programmes, regulations, procedures and controls to prevent and detect activities which would use their services as a means of laundering money derived from serious crimes and from any procedures which may serve to launder such money. Such programmes shall include, at the least, the adoption of procedures to ensure a high level of staff integrity and a system for evaluating the personal, employment and financial background of staff, as well as ongoing programmes to train and educate staff about the responsibilities established by the Act.

The monitoring activities described above refer to the prevention of money-laundering and the detection of suspicious transactions. As for assets attributable to Osama bin Laden and members of Al-Qaida and the Taliban and associated individuals and entities, or which may be made available to them, those controls would apply if such persons conducted financial transactions falling within the parameters described above. If that were not the case, the means of detecting assets belonging to them or to any other persons connected with terrorism would be on the basis of the lists provided by the Security Council and of information from other countries, international or regional organizations, or the regional and international intelligence community.

12. Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities". Please provide a list of the assets that have been frozen in accordance with this resolution. This list should also include assets frozen pursuant to resolutions 1267 (1999), 1333 (2001) and 1390 (2002). Please include, to the extent possible, in each listing the following information:

- **Identification(s) of the person or entities whose assets have been frozen;**
- **A description of the nature of the assets frozen (i.e., bank deposits, securities, business assets, precious commodities, works of art, real estate property, and other assets);**
- **The value of assets frozen.**

No assets belonging to Listed individuals or entities have been identified in Costa Rica; consequently, there is no description of assets frozen or of their value.

13. Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen as being related to Osama bin Laden or members of the Al-Qaida or the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.

No funds or other assets have been frozen.

14. Pursuant to resolutions 1455 (2003), 1390 (2002), 1333 (2000) and 1267 (1999), States are to ensure that no funds, financial assets or economic resources are made available, directly or indirectly, to Listed individuals or entities or for their benefit, by nationals or by any persons within their territory. Please indicate the domestic legal basis, including a brief description of laws, regulations and/or procedures in place in your country to control the movements of such funds or assets to designated individuals and entities. This section should include a description of:

- **The methodology, if any, used to inform banks and other financial institutions of the restrictions placed upon individuals or entities listed by the Committee, or who have otherwise been identified as members or associates of Al-Qaida or the Taliban. This section should include an indication of the types of institutions informed and the methods used.**

See answer to question 2. The procedure is that the lists are sent to the ICD for forwarding to the three Superintendents' Offices, which in turn send them to the supervised entities. If it were to be discovered that Listed individuals or entities had assets in Costa Rica, the supervised entity must inform the appropriate Superintendent's Office, which in turn would forward the information to the UAF. Having verified the situation, the latter would then transmit the information to the judicial branch so that the court order to freeze the funds could be issued.

- **Required bank-reporting procedures, if any, including the use of Suspicious Transaction Reports (STR), and how such reports are reviewed and evaluated.**

As stated in response to question 11, Act No. 8204 sets out the general procedures. Also of relevance are External Circular 15-2001, External Circular

SUGEF 27-2001 and External Circular SUGEF 039-2003, which are attached as annexes and explain the procedures in greater detail.

- **Requirements, if any, placed on financial institutions other than banks to provide STR, and how such reports are reviewed and evaluated.**

See the previous answer and the answer to question 11.

- **Restrictions or regulations, if any, placed on the movement of precious commodities such as gold, diamonds and other related items.**

There are currently no such regulations establishing financial controls over the items mentioned in this question. However, the draft law to strengthen the country's counter-terrorism legislation proposes the inclusion of a new article which would govern goods of this type. The text of the proposed article is as follows:

> "Article 15 BIS. Individuals and corporate entities which are engaged in economic activities other than those mentioned in articles 14 and 15 of this Act must report to the Costa Rican Drug Institute any commercial transactions carried out in a repeated manner and in cash, including transfers to or from another country, in national or foreign currency, of amounts equal to or greater than ten thousand United States dollars (US$ 10,000) or its equivalent in colones. Such economic activities include the following:
>
> (a) Bargain and sale or conveyance of real estate, weapons, precious stones and metals, works of art, jewellery, automobiles and securities;
>
> (b) Casinos, wagers and other operations related to games of chance;
>
> (c) Credit card operations;
>
> (d) Professional services.
>
> For these purposes, the forms produced by the Costa Rican Drug Institute shall be utilized."

As for customs controls, precious items such as gold, diamonds and similar items are considered as merchandise and, in principle, are to be declared as such by travellers.

- **Restrictions or regulations, if any, applicable to alternate remittance systems such as — or similar to — "hawala", as well as on charities, cultural and other non-profit organizations engaged in the collection and disbursement of funds for social or charitable purposes.**

As has been explained above in response to question 11, article 15 of Act No. 8204 extends financial controls to the subjects considered therein, obliging them to register with SUGEF and to submit to financial monitoring for the prevention of money-laundering. In this regard, SUGEF has already prepared the rules to govern such procedures, and it is expected that they will be adopted and implemented in the next two months. The proposed amendments to Act No. 8204 contained in the draft law to strengthen the existing counter-terrorism legislation will permit those controls to be applied also to the prevention of the financing of terrorism.

IV. Travel ban

Under the sanctions regime, all States shall take measures to prevent the entry into or transit through their territories of Listed individuals (paragraph 1 of resolution 1455 (2003), paragraph 2 (b) of resolution 1390 (2002)).

16. Have you included the names of the Listed individuals in your national "stop list" or border checkpoint list? Please briefly outline steps taken and any problems encountered.

See previous answer.[1] As for problems encountered, the names on the List are generally difficult to verify precisely, mostly owing to the numerous aliases which are frequently used.

17. How often do you transmit the updated List to your border control authorities? Do you possess the capability of searching List data using electronic means at all your entry points?

The DIS updates the List periodically and transmits it to its regional offices, which coordinate with immigration control posts at all the country's authorized border crossing points. The immigration authorities do have the capability of searching List data using electronic means.

18. Have you stopped any of the Listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.

No Listed individual has been stopped to date.

V. Arms embargo[2]

Under the sanctions regime, all States are requested to prevent the direct or indirect supply, sale and transfer, to Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals and entities associated with them, from their territories or by their nationals outside their territories of arms and related materiel of all types, including the provision of spare parts and technical advice, assistance, or training related to military activities (paragraph 2 (c) of resolution 1390 (2002) and paragraph 1 of resolution 1455 (2003)).

20. What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction by Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?

Costa Rica does not possess, produce, import or export conventional weapons, weapons of mass destruction or any other types of weapons.

---

[1] Translator's note: the previous answer (to question 15) is described by the reporting State in its covering letter as confidential and has been omitted at that State's request.

[2] Translator's note: Question 19 has been omitted — see footnote 1.

21. What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them?

See previous reply.

22. Please describe how your arms/arms broker licensing system, if any, can prevent Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.

See replies to questions 20 and 21.

Nevertheless, in terms of light weapons and explosives, Costa Rica has an Arms and Explosives Act (Act No. 7530 of 10 July 1995 and amendments). The following articles relate to controls on weapons of that type:

"Article 67. **Monitoring, oversight and supervision.** All aspects of the monitoring, oversight and supervision of any activity involving weapons, munitions, explosives, pyrotechnic devices, chemicals, explosive powder and raw materials for the manufacture of the products regulated by this Act are the responsibility of the Arms Directorate of the Ministry of Public Security, the Interior and Police."

"Article 68. **Manufacture, storage, trade, import and export.** For the manufacture, storage, trade, import and export of arms, munitions, explosives, pyrotechnic devices, explosive powder of any kind and raw materials for the manufacture of the products regulated by this Act, any individual or legal entity must have a permit from the Arms Directorate, which shall issue it in accordance with this Act and its Regulations. It is forbidden to sell explosive powder or to supply products based on such powder in any way to under-age persons or persons who have been placed under a banning order."

"Article 69. **Conditions.** Factories, industrial plants, workshops, commercial establishments and other establishments engaged in the activities listed in the preceding article shall comply with the conditions of security, technical functioning and production which are set out in the regulations."

"Article 72. **Characteristics of the permit.** Any person wishing to manufacture, store, trade, import, export or sell permitted weapons, munitions, explosives, explosive powder and raw materials for the manufacture of products regulated by this Act shall submit to the Arms Directorate an application for a permit, stating the characteristics, quantity, origin and means of distribution and sale of those items. The statements made in that application shall have the legal effect of a sworn statement. The applicant shall also attach a copy of the specific permit from the Ministry of Health."

The customs service will not authorize clearance without such a permit. For the manufacture, marketing and storage of the products regulated by this Act, physical installations shall meet appropriate security standards.

If the number of weapons exceeds 100, authorization from the Ministry of Public Security, the Interior and Police shall be required. In the issuing of the aforementioned permits, the Arms Directorate shall avoid any practice which is

monopolistic or restricts the freedom of trade. It is expressly forbidden to manufacture prohibited weapons or military equipment.

23. Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Osama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?

See the answers to questions 20 and 21.

VI. Assistance and conclusion

24. Would your State be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals.

Costa Rica is very willing to collaborate with other countries in exchanging intelligence information. The Government is also prepared to send any technical personnel required for training activities, on conditions to be determined by mutual agreement.

25. Please identify areas, if any, of any incomplete implementation of the Taliban/Al-Qaida sanctions regime, and where you believe specific assistance or capacity-building would improve your ability to implement the above sanctions regime.

See answer to question 15. The Consolidated List does not appear in the databases of the Interpol office in Costa Rica, so it would be desirable to ensure that the List is incorporated into Interpol databases.

26. Please include any additional information you believe pertinent.